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*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of  
Public Interest Obligations  
of TV Broadcast Licensees

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)  
) MM Docket No. 99-360  
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**COMMENTS OF THE  
BENTON FOUNDATION**

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## **I. Introduction and Background**

The Benton Foundation ("Benton") respectfully submit this comment in response to the Commission's Notice of Inquiry on the Public Interest Obligations of TV Broadcast Licensees, FCC 99-360 (rel. Dec. 20, 1999) ("NOI").

Benton urges the Commission to issue a Notice of Proposed Rulemaking (NPRM) to determine how digital broadcasters should fulfill their roles as public trustees of the airwaves. Digital technologies do not reduce the needs for public interest obligations: to the contrary, the radical transformation of television broadcasting made possible by digital technology makes a NPRM outlining the public interest obligations of broadcasters even more urgent.

With digital broadcasters already up and running, it is imperative that the Commission initiate a single proceeding to implement changes to any of its regulations concerning the public interest obligations of broadcasters. As the report of on the President's Advisory Committee on the Public Interest Obligations of Broadcasters states, "It is important to help affirmatively shape the new digital television era, in concert with market forces and the technology itself, by recommending appropriate legal obligations and marketplace rules."

A NPRM should include, but not be limited to, the definition of the minimum public interest obligations of broadcasters, applying said obligations to broadcasters that multiplex their digital signals, and a timetable for adopting these obligations for digital broadcasters. The proceeding should be completed within one year of the closing comment date of the present proceeding. Thereafter, the Commission should review the public interest obligations of broadcasters every five years.

Broadcasters' abysmal performance providing coverage of issues of local concerns exemplifies the needs for a rulemaking to clearly define their obligations. Benton urges the Commission to begin that proceeding and to base the next generation of public interest obligations on a collection of principles that recognize the rights of viewers in American broadcasting.

Since 1981, Benton has worked to realize the social benefits made possible by the public interest use of communications. Through its projects, the foundation seeks to shape the emerging communications environment in the public interest. Bridging the worlds of philanthropy, public policy and community action, Benton demonstrates and promotes the use of digital media to engage, equip and connect people to solve social problems. Benton's Communications Policy Project is a nonpartisan initiative to strengthen public interest efforts in shaping the emerging communications environment.

Benton has an endowment of approximately \$14 million, the annual income from which is devoted to its own operating projects. Because of Benton's pioneering work, a number of foundations, corporations and government provide additional funding. In 2000, the Foundation operates with a staff of 30 and a budget of \$6 million. Funders include: AOL

Foundation, AT&T Foundation, Carnegie Corporation, Casey Family Programs, Annie E. Casey Foundation, Ford Foundation, Robert Wood Johnson Foundation, Joyce Foundation, W.K. Kellogg Foundation, Knight Foundation, Lucent Technologies, John D. and Catherine T. MacArthur Foundation, Microsoft Corporation, NEC, National Endowment for the Arts, Open Society Institute, David and Lucile Packard Foundation, Rockefeller Foundation and The Rockefeller Brothers Fund.

In April 1996, Benton began a series of ads on the new digital environment and the public interest. The first ad was an open message to broadcasters which appeared in the *Wall Street Journal* and *Broadcasting & Cable*. Benton called upon broadcasters to use the airwaves to initiate a real debate over the future of television and the medium's potential to serve children better, to use interactive and on-demand features to provide the information people want and need every day, and to facilitate political debate. In that same year, we also filed comments before the Commission requesting clearer public interest obligations, and encouraged others to file supporting comments. A growing number of new groups to this issue weighed in supporting our petition, including the Office of the Mayor of Pittsburgh, KPBS-TV, Fordham University, and other nonprofits such as Public Citizen and Join Together Online. We are now organizing meetings with FCC Commissioners on this issue, bringing in more new players to the debate, such as the National Urban League, Common Cause, A\*DEC Distance Learning Consortium, Telecommunications Cooperative Network (TCN), and the National Institute for Family and Media.

Charles Benton, Chairman of the Benton Foundation, served on the President's Advisory Committee on the Public Interest Obligations of Broadcasters. Benton was chosen to serve as the home of the Advisory Committee legacy, acting as the institutional memory and tracking the debate on and progress of the Advisory Committee's report and recommendations. The work of the Advisory Committee is just one step in the greatest transformation in television's history. Benton's PIAC Legacy Project is the online home for the recommendations of the Advisory Committee as well as a convenient nexus for tracking reaction to the proposals, implementation by Congress and the Commission, and private efforts to realize the Committee's goals. In this capacity, Benton has convened a number of meetings to involve new players in the debate over the future of television.

## **II. Broadcasters Are Not Providing Local Public Affairs Programming**

As noted in this Inquiry, in April 1998, the Media Access Project and the Benton Foundation published a report, *What's Local about Local Broadcasting?* ([www.benton.org/Television/whatslocal.html](http://www.benton.org/Television/whatslocal.html)), that surveyed stations in selected markets regarding the amount of local public affairs programming aired weekly. The survey found that, in the five markets examined (Chicago, IL; Phoenix, AZ; Nashville, TN; Spokane, WA; and Bangor, ME), 40 commercial broadcasters provided 13,250 total hours of programming – just 0.35% (46.5 hours) were devoted to local public affairs over a two-week period. Moreover, the survey found that 35% of the stations provided no local news, and 25% offered neither local public affairs programming nor local news.

In *Market Conditions and Public Affairs Programming: Implications for Digital Television Policy* (see Attachment A), Benton investigated whether marketplace conditions affect the provision of public affairs programming by analog television broadcasters. This examination of the relationship between market conditions and public affairs programming in the analog television environment can provide insights into broadcasters' programming practices that can then be applied to the issue of public interest programming obligations in the digital realm. The central research question was: Does competition encourage the airing of public affairs programming?

This study first compared levels of public affairs programming across a random sample of 24 markets. Next, this study examined a random sample of 112 commercial broadcast stations to determine whether, when accounting for station characteristics and market size and demographics, competitive conditions affect the quantity of public affairs programming provided. In order to conduct these analyses, the broadcast schedules for each station included in the station and/or market samples were analyzed for the two-week period beginning on January 17<sup>th</sup> and concluding on January 30<sup>th</sup>, 2000. This study analyzed local public affairs programming alone, as well as local and non-local public affairs programming combined.

The primary results of these analyses were as follows:

- Within the 24 markets studied, there was an average of 6.52 hours of local public affairs programming per market during the two-week time period, and an average of 1.1 hours per commercial station.
- 0.3 percent of the total commercial broadcast time within these markets was devoted to local public affairs programming.
- When local and non-local public affairs programming were analyzed together, the average hours of public affairs programming per market increased to 21.2 (3.59 hours per station) during the two-week time period.
- 1.06 percent of the total commercial broadcast time within the studied markets was devoted to local and non-local public affairs programming.
- Competitive conditions, market demographics, and station characteristics had no significant effect on the quantity of local public affairs programming provided by individual broadcast stations.
- Competitive conditions were significantly related to the provision of local and non-local public affairs programming combined. Specifically, there was a significant positive relationship between the number of commercial broadcast stations in a market and the amount of public affairs programming that a station provides. The moderate level of explained variation (less than 25 percent), however, suggests that public affairs programming decisions are quite resistant to market conditions.

Overall, the results of this study suggest that broadcasters generally devote a very small fraction of their broadcast time to public affairs programming, and that marketplace incentives do not effectively motivate the provision of such programming, particularly in terms of locally produced public affairs programming.

### **III. Broadcasters Are Not Providing Quality Local Television News**

Although broadcaster may argue that local public affairs is covered in extended news programming, the evidence does not bear them out. In November 1999, the Project for Excellence in Journalism ("Project for Excellence") released a study on local television newscasts. After examining the top-rated half hour news in 19 cities during a February sweeps week and a week in April that was not part of sweeps, the Project for Excellence rated more than 80% of stations with "D" or "F" grades for investigative stories, special series or tough, high-quality interviews. The study found that even coverage of breaking news, a staple of local TV that requires less effort than investigative reports, is dropping on local TV newscasts. Out-of-town feeds, however, are on the rise: up 25% from 1998. The Project on Excellence also found that local TV news is one-sided and reactive: 9 out of 10 stories come from the police scanner or a planned news event. While covering controversial issues, local TV news is most likely (55% of the time) to provide just one point of view.

In addition to the Project for Excellence study, a Kaiser Family Foundation/Center for Media and Public Affairs<sup>1</sup> report shows that crime and accidents make up roughly 30 percent of local newscasts, while reporting on local city or state government was only two percent combined. Sports and entertainment combined for ten percent.

### **IV. The Public Is Unaware Of Broadcasters' Responsibilities**

An informed public plays a vital role in helping stations serve the local community's needs.<sup>2</sup> The Commission allocates new stations based on the relative needs of communities for additional broadcast outlets and determines outcomes of application (to build, modify, renew or sell) based on the public interest.<sup>3</sup> Stations are expected to be aware of the important problems or issues in their communities and to foster public understanding by presenting programs and/or announcements about local issues.<sup>4</sup> The Commission relies on the public to encourage television station owners to provide responsive high-quality broadcasting services.<sup>5</sup>

Unfortunately, most Americans are unaware of how broadcasters compensate the public for use of the airwaves.<sup>6</sup> A majority (52%) believe that broadcasters pay for access to the airwaves. Fewer than one-third (29%) say that they use the airwaves for free, while an additional 19 percent volunteer that they don't know. Seventy-one percent of adults do not know that broadcasters get access to the airwaves for free. Americans believe

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<sup>1</sup> *Assessing Local Television News Coverage of Health Issues*. Kaiser Family Foundation/Center for Media and Public Affairs Report, 1998

<sup>2</sup> *The Public and Broadcasting*. Mass Media Bureau, FCC. June 1999. p.1

<sup>3</sup> *Ibid*, p.2.

<sup>4</sup> *Ibid*, p.2

<sup>5</sup> *Ibid*, p.1

<sup>6</sup> Data from: *Television in the Digital Age: A Report to the Project on Media Ownership and the Benton Foundation*. Lake, Snell, Perry & Associates. December 1998.

broadcasters pay "a lot" – estimates ranging from millions to billions. Fifty-six percent guess that the price tag is in the range of hundreds of thousands to millions of dollars.

Lake, Snell, Perry polling found that a majority (54%) of Americans support charging broadcasters for the spectrum they will use to convert to digital television.<sup>7</sup> When people are informed that television station owners are receiving spectrum for free to make the transition to digital, nearly eight in ten (79%) favor a proposal to require broadcasters to pay 5 percent of their revenues into a fund to provide more money for public broadcasting.<sup>8</sup> When Americans learn that broadcasters are given free use of the airwaves, nearly all people (80%) support broadcasters meeting certain public interest obligations like additional educational programming for children and more local programming.<sup>9</sup> Among the obligations a majority of Americans favor are:

- Providing more adult education and access to community college courses
- Providing more local and community issues programming
- Giving candidates 5 free minutes of free airtime each night during election season

Although television is the primary source of news and information for Americans, the public remains unaware of how broadcasters are licensed and what the broadcasters' role as public trustee is or ought to be. The public needs a definitive statement by the Commission on what the rights of viewers are. Moreover, beginning a NPRM would allow for broad public debate and further serve to inform the public about broadcast regulation and their important role in it.

#### **V. The Commission Should Adopt a Clear Definition of Public Interest Obligations of Digital Television Broadcasters Based on the Right of Viewers and the New Capacity Afforded by the Transition to Digital Technology**

Recognizing the market failures in the provision of local public affairs programming and quality local news noted above, the Commission should adopt a clear definition of digital broadcasters' public interest obligations, based on the rights of viewers and the new capacities afforded to broadcasters by the transition to digital technology. The public has entrusted digital licensees with a valuable resource and the broadcasters must act as trustee of the public. In order to remain flexible enough to accommodate the quick pace of technological innovation, the definition should be an evolving set of programming, telecommunications and information services. The Commission should periodically reexamine these obligations, taking into account advances in broadcast technologies and services and changing public need. In establishing the definition, the Commission should consider the extent to which such programming, telecommunications and information services --

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<sup>7</sup> Support for charging broadcasters jumps to 71 percent when the money is earmarked to fund more children's educational and non-commercial programming.

<sup>8</sup> A near majority (48%) strongly favor this proposal.

<sup>9</sup> Only seven percent are opposed.

- (A) serve the First Amendment rights of the viewing public;
- (B) are essential to education, public health, or public safety; and
- (C) are consistent with the public interest, convenience, and necessity.

The Commission should also ensure that when addressing the interactive capabilities of digital broadcasting, the public's right to privacy should be protected.

## **VI. Broadcasters' Obligations Should Be Based On A Viewers' Bill of Rights**

The Commission should base the public interest obligations of broadcasters on the following principles which Benton offers collectively as the Viewers' Bill of Rights. Congress and the Commission adopted a similar set of principles on which to base universal service policy in the Telecommunications Act of 1996.<sup>10</sup>

### **1.) The Rights of Viewers Are Paramount**

As the public owns the airwaves, the Commission should license use of spectrum for broadcast while retaining the public's free speech rights as listeners and speakers and the collective right to have the media function consistently with the ends and purposes of the First Amendment.

Far from embodying new policy, adopting this principle would further codify the Supreme Court's decision in *Red Lion Broadcasting v. FCC* and Justice White's majority opinion which is as relevant today as it was when it was made:

But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. See *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940); *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 361-362 (1955); 2 Z. Chafee, *Government and Mass Communications* 546 (1947). It is the purpose of the First Amendment to preserve an uninhibited market-place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. *Associated Press v. United States*, 326 U.S. 1, 20 (1945); *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). See Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 Harv. L. Rev. 1 (1965). It is the right of the public to receive suitable access to social, political, esthetic, moral, and

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<sup>10</sup> See 47 U.S.C. §§254(b)



other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC.

## **2.) A Commitment to Localism**

Broadcasters are licensed to serve communities, not markets. The needs of communities must be ascertained and addressed by fair, balanced and ample programming. Issues of importance at the local, state, federal, and international level must be given significant coverage, this coverage should be substantive and issue-oriented.

As the Commission notes in this proceeding, one of a broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license.<sup>11</sup> Local programming is the keystone commitment of America's broadcast system and the basis for the licensing scheme under which every broadcaster operates. The nation has hundreds of commercial broadcasters in place not to rebroadcast national programming, but to be responsive to the interests, convenience, and necessity of the communities they serve. This compact between local broadcasters and their communities -- that a broadcaster receives a license to act as a trustee of the public interest -- is expressed in both court rulings and Commission policy. In fact, with regard to the mandatory cable carriage provisions for commercial broadcasters, Congress believed that laws were required to ensure: (1) the continued availability of free over-the-air television broadcast service<sup>12</sup> and (2) the *benefits derived from the local origination of programming from television stations*.<sup>13</sup>

Under the Communications Act of 1934, applicants for broadcast licenses must agree to provide program service to the particular community to which they are licensed. This requirement was the basis for the United States Court of Appeals ruling in 1956 that in requiring "a fair, efficient and equitable distribution" of service, Section 307(b) of the Communications Act encompasses "not only the reception of an adequate signal but also community needs for programs of local interest and importance and for organs of local self-expression." The Court affirmed that "the prime factor" in broadcast programming regulation "is the presentation of programs of local interest and importance."<sup>14</sup>

The local basis of its service distinguishes broadcasting from cable and satellite services which consist almost entirely of national programming and (in the case of cable) retransmission of local TV stations. News, public affairs programming and other opportunities for local self-expression are the most important of the 14 specific programming "elements usually necessary to meet the... needs and desires of the community in which the station is located..." as enumerated in the FCC's classic formulation of public interest programming obligations, issued in 1960.

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<sup>11</sup> Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, MM Docket No. 83-670, *Report and Order*, 98 FCC 2d 1076, 1091 (1984).

<sup>12</sup> 1992 Cable Act, §2(a)(12). Section 2 contains the findings underlying the 1992 Cable Act.

<sup>13</sup> 1992 Cable Act, §2(a)(10) [emphasis added].

<sup>14</sup> *Pinellas Broadcasting Co. v. FCC*, 230 F.2d 204, 206 cert. denied, 350 US 1007 (D.C. Cir. 1956)

The principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area.<sup>15</sup> The Commission should prohibit any conditions placed on local stations by broadcast networks that limit the ability of the station to preempt national programming to air programming that responds to local concerns.

Benton echoes and believes a NPRM should address the findings and recommendations of Advisory Committee:<sup>16</sup>

- Television broadcasters and their staffs occupy positions of unique responsibility in their communities and should conscientiously endeavor to be acquainted fully with the community's needs and characteristics in order to better serve the welfare of its citizens.
- Requests for time for the placement of public service announcements or programs should be carefully reviewed with respect to the character and reputation of the group, campaign, or organization involved; the public interest content of the message; and the manner of its presentation.
- Stations should devote substantial time to the provision of public service announcements. Typically, broadcasters have provided well over 75 public service "spots" per week; they should endeavor to continue this practice, as community needs dictate. Public service announcements should not be relegated to off-hours, such as late night and early morning, but should be distributed throughout the broadcast day and during primetime.
- In accordance with the educational and democratic functions of broadcasting, stations should provide reasonable access to those members of the local community who wish to use the airwaves to discuss issues of local concern. Broadcasters should therefore provide appropriate coverage of topics of particular concern to the local community.
- Broadcasters should offer programming that serves the needs of diverse members of the local community, including traditionally underserved and disadvantaged groups. Broadcasters should be sensitive to the diversity of the communities that they serve and attempt to fulfill their responsibility to the full range of relevant groups, including but not limited to religious, demographic, racial, and ethnic groups.

### **3.) Serve The Needs of Democracy**

The needs of our Nation's democracy demand fairness of debate in political coverage. A well-functioning democracy depends on access to information and ideas. An informed citizenry is vital to a democracy that prizes both accountability and deliberation. The needs of an informed citizenry must be addressed above all others. During elections, viewers have a right to coverage of competing candidates and viewpoints. Candidates should be given the opportunity to address voters through a variety of formats including, but not limited to, debates, interviews, features and grants of free air time.

The Commission asks how, broadcasters' public interest obligations can be refined to promote democracy and better educate the voting public.<sup>17</sup> The Advisory Committee

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<sup>15</sup> Report re En Banc Programming Inquiry, 44 FCC 2203, 2314 (1960)

<sup>16</sup> Advisory Committee Report p.109.

Report recommends that television broadcasters provide five minutes each night between 5:00 p.m. and 11:35 p.m. (or the appropriate equivalent in Central and Mountain time zones) for “candidate-centered discourse” thirty days before an election.<sup>17</sup> The Committee envisions maximum flexibility for broadcasters, allowing them to choose the candidates and races – federal, state, and local – that deserve more attention. The Committee envisions that stations could choose formats, which might include giving candidates one minute of airtime, conducting mini-debates, or doing brief interviews, or including the “discourse” in newcasts.

As part of license renewal process, broadcasters should be required to disclose what if they have provided the five minutes per night as envisioned by the Advisory Committee. If, in the renewal process, the Commission discovers a market failure – if one half of all broadcasters in a viewing market have not provided the candidate-centered discourse, the Commission should then impose the plan as an obligation on all broadcasters in that market. Under this plan, broadcasters are given the initial flexibility they seem to desire, but viewers' rights are protected.

#### **4.) Treatment of News, Public Events, Emergencies, and Controversial Issues**

Communities have a right to fair and balanced treatment of news, public events, emergencies, and controversial public issues. Broadcasting serves educational and democratic functions. To permit the genuine understanding of problems and disagreements, citizens need access to local and national news through factual, fair and unbiased reporting that is clearly distinguished from advertising.

Benton agrees with the following recommendations of the Advisory Committee:

##### **a.) News**

- A television station's news programming should be both substantive and well-balanced. Especially because they serve educational and democratic functions, stations should devote substantial attention to both local and national issues of general importance. News reporting should be factual, fair, and without bias. Commentary and analysis should be clearly identified as such.
- A television broadcaster should exercise particular discrimination in the acceptance, placement, and presentation of advertising in news programs so that such advertising should be clearly distinguishable from the news content.
- Stations should make an effort to devote enough time to public issues to permit genuine understanding of problems and disagreements.

##### **b.) Public Events**

- A television broadcaster has an affirmative responsibility to be informed of important public events and to inform the public of these events, in order to provide coverage consonant with the ends of an informed and enlightened citizenry.

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<sup>17</sup> NOI at 34.

<sup>18</sup> Advisory Committee p.59

- The treatment of such events by a television broadcaster should provide adequate, substantive, and informed coverage of relevant issues, including issues of local concern.

### **c.) Controversial Public Issues**

- Television provides a valuable forum for the expression of responsible views on public issues of a controversial nature. Television broadcasters should seek out and develop with accountable individuals, groups, and organizations, programs relating to controversial public issues of importance to fellow citizens and give fair representation to opposing sides of issues that materially affect the life or welfare of a substantial segment of the public.
- Requests by individuals, groups, or organizations for time to discuss their views on controversial public issues should be considered seriously and on the basis of their individual merits, and in the light of the contribution that the use requested would make to the public interest, and to a well-balanced program structure.
- Broadcasts in which stations express their own opinions about issues of general public interest should be clearly identified as editorials. They should be unmistakably identified as statements of station opinion and should be appropriately distinguished from news and other program material.
- Stations should give attention to controversial issues of distinctively local concern.

## **5.) Diversity**

Diverse voices shall find expression on the airwaves. The strength of our democracy flows from the diversity of our voices. Broadcasting should provide a platform through which the public can express its views on issues of community interest. As a window to the world for viewers, broadcasting should mirror the religious, demographic, racial and ethnic diversity of communities.

Independent production is often a prime opportunity for the underrepresented to be heard, including persons of color and cultural minorities, thereby adding to the plurality of voices represented in our mass communications. Therefore, the Commission's rules concerning diversity should serve to aid independent producers in both providing funding for programming and providing incentives for giving these voices access to the airwaves.

Hiring and promotion policies that result in significant representation of minorities and women in decision-making positions in broadcast management should increase programming diversity. Such policies (as well as policies facilitating station ownership by minorities and women) are important in their own right, apart from any direct impact on programming diversity, because they better connect the full community and the broadcaster, reinforce commitments to localism, and they benefit economic development.

Digital television will gradually create new programming and business opportunities. Serving diverse interests within a community is both good business and good public policy. Broadcasters should aggressively seek out ways to employ digital technology in creative ways to accomplish this goal. The Commission has concluded that it has the

authority to require broadcasters to file annual employment reports.<sup>19</sup> The Commission should use this authority to require broadcasters to disclose employment information in their public inspection files.

## **6.) Accessibility**

Programming must be accessible to all citizens. Persons with hearing and seeing disabilities have full rights to free, over-the-air broadcast programming.

Digital technology will open new avenues to enhance and expand captioning access. For example, the ability to alter the size of captions will enable viewers to see both captions and other text appearing on a television screen. Broadcasters should use new digital closed captioning technologies to provide maximum choice and quality for caption viewers, and to work to make captioning in the digital age functionally equivalent to audio transmissions.

Utilization of video description as a form of providing access has been hindered by the analog standard, which only permits delivery of descriptions via the secondary audio program channel. In contrast, digital technology offers multiple audio channels, with significantly greater bandwidth, that can more easily accommodate video descriptions. Broadcasters should allocate sufficient audio bandwidth for the transmission and delivery of video description in the digital age to make expanded use of this access technology technically feasible.

## **7.) A Safe Haven for Children**

It is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the information they receive.<sup>20</sup> Most scholars engaged in research on the influence of media on children and adolescents concur that mass media rank among the most important socialization agents influencing today's youth<sup>21</sup>. A 1999 Kaiser Family Foundation study, *Kids &*

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<sup>19</sup> FCC 00-20 at 63.

<sup>20</sup> Senate Report No.227, 101<sup>st</sup> Congress, 1<sup>st</sup> Session 5-9 (1989) ("Senate Report").

<sup>21</sup> Christenson, P.G., & Roberts, D.F. (1983). The role of television in the formation of children's social attitudes. In M.J.A. Howe (Ed.), *Learning from television: Psychological and educational research*. London: Academic Press (pp. 79-99). Christenson, P.G., & Roberts, D.F. (1998). *It's not only rock and roll: Popular music in the lives of adolescents*. Cresskill, NJ: Hampton Press. Comstock, G., Chaffee, S. Katzman, N., McCombs, M., & Roberts, D. (1978). *Television and human behavior*. New York: Columbia University Press. Comstock, G. with Paik, H. (1991). *Television and the American child*. San Diego, CA: Academic Press. Federman, J., Carbone, S., Chen, H., & Munn, W. (1996). *The social effects of electronic interactive games: An annotated bibliography*. Studio City, CA: Mediascope. Henriksen, L., & Roberts, D.F. (in press). Mass media, risk, and adolescents. In M.K. Rosenheim & M.F. Testa (Eds.), *Trends in the well-being of children and youth*. Thousand Oaks, CA: Sage. Huston, A.C., Donnerstein, E., Fairchild, H., Feshbach, N.D., Katz, P.A., et al., (1992). *Big world, small screen: The role of television in American society*. Lincoln, NB: University of Nebraska Press. Roberts, D.F. (1993). Adolescents and the mass media: From "Leave It to Beaver" to "Beverly Hills 90210." *Teachers College Record*, 94(3), 629-643. Roberts, D.F., & Maccoby, N. (1985). Effects of mass communication. In G. Lindzey & E. Aronson (Eds.), *The handbook of social psychology*, 3<sup>rd</sup> ed. vol 2, *Special fields and applications*. New York: Random House (pp. 539-598). Strasburger, V. (1995). *Adolescents and the media: Medical and psychological impact*. Thousand Oaks, CA: Sage. Wartella, E., & Reeves, B. (1987). Communication and children. In C.R.

*Media @ The New Millennium*, examined media use among a nationally representative sample of more than 3,000 children ages 2-18 and found that children, on average, spend nearly three hours per day watching television. The study also found that many parents are not exercising much control over their children's media use: among kids eight and older, two-thirds (65%) have a TV in their bedroom and say the TV is usually on during meals in their home, and nearly that many (61%) say their parents have set no rules about TV watching. Parents watch TV with their kids in this age range just 5% of the time. Nearly one out of every four kids in this age group (24%) spends more than five hours a day watching TV. Even among younger kids, ages 2-7, one in three (32%) has a TV in their bedroom. More than a third (35%) of parents of 2-7 year-olds say the TV is on in their homes "most of the time" and almost half (47%) say it is usually on during meals. Parents watch TV with their young kids just 19% of the time.

All children deserve access to programming that addresses their range of interests and needs at various ages including educational programming that can supplement schooling and good parenting. News and public affairs programming should be made available to prepare children for the rights and responsibilities of citizenship. Broadcasting must be a safe haven for children -- both providing the tools to parents to help them choose appropriate programming and preventing exposure to excessively violent and harmful programming or exploitative advertising and marketing. Licensees that provide interactive services should be prohibited from collecting personal information from children under 13 without the prior parental consent.

In enacting the Children's Television Act of 1990 (CTA), Congress found that television has the power to teach children, that "television can assist children to learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them."<sup>22</sup> Congress also found, however, that there are significant market disincentives for commercial broadcasts to air children's educational and informational programming.<sup>23</sup> The Commission should reexamine policies and rules concerning children's television programming and apply its existing requirements to every channel a digital broadcaster provides. By so doing, the Commission will ensure that children, as well as broadcasters, benefit from the increased capacity digital television capacity offers.

With the transition to digital broadcasting and the potential of multicasting, the Commission must review its CTA rules and determine how they apply to stations that provide multiple channels. Will a station that provides four channels of programming be responsible for three hours per week of children's educational programming, or 12? Will the broadcaster be required to air that programming across all the channels provided or on just one? If the broadcaster provides all of the core children's programming on one channel, do advertising restrictions apply to programming shown on other channels?

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Berger & S.H. Chaffee (Eds.), *Handbook of communication science*. Newbury Park, CA: Sage (pp. 619-650). Van Evra, J. (1990). *Television and child development*. Hillsdale, NJ: Lawrence Erlbaum.

<sup>22</sup> Senate Report.

<sup>23</sup> Senate Report at 9.

The Commission should also adopt standards that allow for independent ratings to be made available for parents. A modification of the Commission's V-Chip regulations would provide viewers with the ability to choose between raters as they now choose which programs they watch.

## **8.) Education**

Broadcasting makes possible schools without walls and lifelong learning. The opportunities for broadcasting to improve education have extraordinarily high stakes for our nation. The acquisition and use of knowledge is a major resource for our society in the coming century and is pivotal for our quality of life, our economic development, our democracy, and indeed our security. The nation's success depends upon how effectively all members of our society are prepared to use information technologies, which in turn means that the proficiency of our citizens depends upon the quality of our educational offerings and our capacity to utilize information technologies for educational ends. We put our children and ourselves at a competitive disadvantage in the global economy if we do not invest wisely in educational resources. Licensees should devote entire channels or sub-channels to the lifelong educational needs of all citizens.

The Advisory Committee's report, *Charting the Digital Future*, contains ten recommendations ranging from enhanced disclosures of existing public interest activities to wholly new approaches and theoretical frameworks toward the public interest obligations of TV broadcasters. The Commission addresses a number of these recommendations in this proceeding, but fails to seek comment on one of the key recommendations – the creation of new digital channels in each viewing market devoted to non-commercial, educational programming<sup>24</sup> – assuming that the Advisory Committee's recommendations do not envision a role for the Commission.<sup>25</sup>

The Advisory Committee recommended carving out space on the spectrum for channels devoted specifically to noncommercial educational programming and services, and funding them in ways that will vastly expand the educational opportunities for all Americans, and particularly for those now underserved by information resources. Programming would address the needs of preschool, elementary, secondary, and post-secondary education, lifelong learning, distance learning, literacy, vocational education, children's educational, public affairs, multicultural, arts and civic education, and other programming directed to the educational needs of underserved communities.

As the expert agency, there is a crucial role for the Commission in creating these new channels. Even before Congress acts on the recommendations of the Advisory Committee, the Commission should begin a public proceeding, collecting comment on the demand for such channels and the technical feasibility and reporting to Congress.

As envisioned by the Advisory Committee, the Commission would create an orderly process to allocate these channels in a way that would serve each viewing community. The applicants would first have to draft and submit a plan to the Commission indicating

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<sup>24</sup> See Advisory Committee Report at p.49.

<sup>25</sup> See NOI at footnote 26.

how they would involve the local community, including schools, universities, libraries, and diverse and underrepresented groups, what kinds of noncommercial educational programming they might produce and air, and how the new channel devoted to education would be different from existing public television stations.

#### **9.) Disclosure of Public Interest Activity**

The public has a stake in who uses the airwaves and therefore full disclosure of public interest activity is a requirement of any licensee. Through programming on a variety of media, licensees will report on their process of ascertaining community needs and the programming created to meet those needs. The Commission should include disclosed public interest activity as well as the community served in the renewal process.

Any form of effective regulation, including self-regulation by the broadcast industry, and especially regulation that depends heavily on public participation, requires the availability to the public of adequate information about what a local broadcaster is doing. Some valuable information is currently made available, but should be more accessible. Digital television broadcasters should take steps to distribute such public interest information more widely, perhaps through cooperation with local newspapers and/or local program guides so that viewers can more readily identify and evaluate the efforts local broadcasters are making to address their interests. Similarly, many local television stations now maintain Internet Web sites where they could post on a regular basis this kind of information.

Greater availability of relevant information will increase awareness and promote continuing dialogue between digital television broadcasters and their communities and provide an important self-audit to the broadcasters. The information provided should include, but not be limited to, data related to workforce diversity, local content, programming for children and serving the needs of democracy as noted above.

#### **10.) Spectrum Fees**

If commercial broadcasting cannot meet all the needs of the public as expressed in the principles above, the broadcast industry should share revenues to support public, noncommercial broadcasting. Those who profit from use of the airwaves must compensate the public for that use – preferably through public interest programming, but through spectrum fees, if necessary.

As noted above, Americans support requirements on broadcasters to pay for use of spectrum as other commercial users do. Americans are particularly supportive when fees are directed towards funding public interest programming.

Under the “pay-or-play” model, broadcasters would be given the choice of performing public interest obligations, or of paying a share of revenues to bypass those obligations, while receiving in return an expedited license renewal process. Another option is embodied in a proposal made several years ago by Henry Geller, a telecommunications scholar and former FCC general counsel. Geller would implement a mandatory “pay” system whereby all broadcasters would be relieved of their public interest obligations in



exchange for 2 percent of their gross revenues and 1 percent of the revenues from license transfers. The money collected under the Geller plan would be used for an endowment for public broadcasters, other noncommercial telecommunications entities and noncommercial programming, including programming for children, and for free time for political candidates.

The revenues received could then be used to enhance the public interest, by funding noncommercial public interest programming and services, especially locally originated and oriented programming and services. All broadcasters, of course, would still have to adhere to all statutory requirements and provide closed captioning, emergency reports, and reasonable access to political candidates. But allowing some stations, including religious and shopping channels, to pay in lieu of other public interest obligations would not only be less cumbersome, it would free up resources that could be used to enhance the public interest. A “pay-or-play” type model could replace the traditional regulatory approach with a marketplace model analogous to the trading of “pollution rights” in environmental regulation.

Congress and the Commission have already adopted the “pay or play” model, to some degree, in the approach to ancillary and supplementary services.<sup>26</sup> When a digital broadcaster provides non-broadcast services for a subscription fee or compensation from a third party, the Commission collects a 5% fee. The Commission should consider a similar regulatory model for public interest obligations.

### **11.) Additional Principles**

Allowing for flexibility, the Commission should consider other principles it determines are necessary for the protection of the public interest, convenience, and necessity and are consistent with the Communications Act of 1934 as amended.

## **VII. Conclusion**

In the 11 principles above, Benton offers a flexible set of both types of programming and a process for determining whether broadcasters have met their obligations. We also offer an additional remedy – spectrum fees -- that falls short of forfeiture of license for broadcaster who choose not to meet their public interest obligations.


The most powerful communication medium of the 20th Century is going through a radical transformation. As television broadcasting transitions into the Digital Age, we have a critical opportunity to unlock its educational, cultural, and civic potential. Since the marketplace cannot alone serve the diverse needs of America's people, we must reassert the principles of society and apply them to the new world of digital television. If advanced television is to serve America as a people and not just as a market, then we must seize this critical time to harness television's full potential to serve the public good. What's needed is a strong confirmation from the Commission: the airwaves belong to the public—thus the rights of viewers, listeners, information providers and producers are paramount.

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<sup>26</sup> 47 U.S.C. 336(e)

Digital television will serve democracy in the years to come as long as the public secures a guarantee from station owners to serve our diverse educational, cultural and civic needs.

Respectfully submitted,



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